IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.09 OF 1999

The State of Maharashtra ...Appellant
Vs.
Sahadev Yashwant Surve ...Respondent

Shri Y.M. Nakhwa, A.G.P. for the Appellant.
None for the Respondent.

CORAM : ABHAY S. OKA, J.
DATE : AUGUST 03, 2006.

JUDGMENT:

1. The Appellant- State Government has taken exception to the judgment and award dated 31st December, 1996 passed by the learned Civil Judge, Senior Division, Ratnagiri in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act).

2. Notification under section 4 was issued on 15th April, 1991 in respect of the acquired land bearing Survey No.174, Hissa No.8 and Survey No.175, Hissa No.4 situated at village Nevare, Taluka Ratnagiri, District Ratnagiri. The award was made on 28th October, 1993 by which market value of Rs.250/- per Are was fixed for kharip/varkas land and Rs.2/- per Are for potkharaba land. The reference court by the impugned judgment and award has enhanced the rate to Rs.800/- per Are.

3. The learned A.G.P. appearing for the State submitted that except for copy of Index II pertaining to a transaction made in October 1992 no other documentary evidence was produced by the Respondent-claimant. He pointed out that what was produced by the claimant as reflected from deposition of the claimant is a xerox copy of Index II. He pointed out that the said xerox copy has not been exhibited. He, therefore, submitted that this was a case where there was no evidence whatsoever to grant enhancement. None appears for the Respondent.

4. The award statement which is part of the record discloses that the acquired land is situated at village Nevare, Taluka Ratnagiri, District Ratnagiri. Even the Application for reference refers to village Nevare. The Respondent examined himself in support of his claim. However, he did not examine any other witness. In paragraph No.4 of his examination-in-chief the Respondent has stated thus:

> "I have placed on record the copy of sale deed dated 1/6/92 executed by Sadanand Musale in favour of Rajiv Bhosale. I have also placed on record the xerox copy of the Index II register. The land under the sale

deed is situated at Bhadarpule."

5. I have also perused the roznama of the reference proceedings. The roznama does not disclose that the document of Index II was exhibited. In fact, deposition itself records that what was produced was a xerox copy of the Index II.

6. The reference will have to be made to section 51-A of the Land Acquisition Act, 1894. The said section reads thus:

> "51A. Acceptance of certified copy as evidence.-In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."

The said section provides that a copy given under section 57 of the Indian Registration Act, 1908 may be accepted as an evidence of the transaction is recorded in such document. Perusal of section 57 of the Indian Registration Act shows that copies of entries in Book No.4 and entries in the Index relating thereto shall

be given to any person executing or claiming under documents to which such entries respectively refer. Act, 1908 provides that all copies given under the section shall be signed and sealed by Registering Officer and shall be admissible for the purpose of proving the contents of the original documents. Thus, only a certified copy given under section 57 of the said Act is made admissible under section 51-A. A copy contemplated by section 57 is an extract of Index which is duly signed and sealed by the Registering Officer. In the present case even the original extract was not produced at the time of leading evidence and what was produced was a xerox copy of the Index. There is nothing on record to show that the Appellant consented for exihibiting the said document and that is the reason why the document is not exhibited. Thus, a xerox copy of Index cannot be read in evidence even by invoking the section 51-A.

7. Apart from this aspect, the Respondent has not stated that the land which was subject matter of the sale instance reflected from the copy of Index was comparable to the acquired land. Infact, the land subject matter of copy of the Index is at village Bhadarpure and not at village Nevare.

8. It is well settled position of law that the entire burden of proving that the market value awarded by the Special Land Acquisition Officer/ Collector is inadequate is on the claimant. It appears that subsequent to the production of a xerox copy of Index II, the original certified copy of Index II has been produced. However, the same is not exhibited and was kept in ‘D’ file. The perusal of the said copy shows that except for the date of conveyance and names of parties to the conveyance, no other material particulars are mentioned. There is no evidence led to show what was the nature of the said land. Merely by filing a copy of Index II of sale transaction, it cannot be said that the Respondent has discharged the burden on him. Some evidence was required to be led as regards the location of the land subject matter of the sale and nature of the land which is subject matter of the same. Thus, the said document cannot be read as evidence of a sale transaction in support of case of the Respondent. As stated earlier, this is the only piece of evidence which is available on record. On the basis of the said document enhancement could not have been granted. Hence, Appeal must succeed. Accordingly, I pass the following order:

(i) The impugned judgment and award is quashed and

set aside and Land Acquisition Reference No.05 of 1994 stands dismissed.

(ii) There will be no orders as to costs.

JUDGE